

(1982) 03 MP CK 0029

In the Madhya Pradesh High Court

Case No : Civil Revision No. 339 of 1980

Bhuralal and Others

APPELLANT

Vs

Kailashchand and Others

RESPONDENT

Date of Decision : 05-03-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1, 11, 151

Madhya Pradesh Public Trust Act, 1951 — Section 32(1)

Citation : AIR 1982 MP 203 : (1982) 27 MPLJ 312

Hon'ble Judges : H.G. Mishra, J

Bench : Single Bench

Advocate : H.S. Oberai, for the Appellant; S.R. Joshi, for the Respondent

Final Decision : Allowed

Judgement

H.G. Mishra, J.

This revision is directed against the order dated 29-1-1980, whereby the trial Judge has ordered stay of trial of the suit u/s 32 of the Madhya Pradesh Public Trust Act, 1951 and has also stayed consideration of the application for issuance of a temporary injunction and/or appointment of receiver.

No exhaustive statement of facts is necessary for the decision of this revision. Suffice it to state that the revision-applicants-herein have brought the suit for declaration of title and issuance of a permanent injunction against the defendant-non-applicants on cause of action laid in detail in the plaint. In the suit the applicants submitted two applications (1) for issuance of a temporary injunction for restraining the defendant-non-applicants 2 to 5 from paying rent to defendant-non-applicant No. 1 and (2) for appointment of receiver for collection of the rent of the property in dispute. This application was opposed by the defendant No. 1 inter alia on the grounds that the Court has no jurisdiction to proceed with the suit in view of the bar enacted by Section 32 of the Madhya Pradesh Public Trust Act, 1951 (for short, the Act) and for the same reason the

Court has no jurisdiction to pass any order on any application for grant of temporary injunction and/or appointment of receiver.

The trial Court by the impugned order directed stay of the suit holding that the suit is for and on behalf of a public trust. Accordingly Section 32 of the Act precludes hearing and decision of the suit as also stay of hearing of the application for grant of temporary injunction and/or appointment of receiver. The present revision is directed against that part of the order, which concerns itself with stay of hearing of the application for grant of the aforesaid interim reliefs.

In this revision it was contended by Shri Harbans Singh Oberai, learned counsel for the plaintiff-applicants that the impugned order manifests a clear case of illegal exercise of jurisdiction vested in the Court that Section 32 of the Act does not put a bar to hearing of applications for interim reliefs, as claimed by the applicants that Section 32 only bars hearing or decision of the suit and cannot be construed to bar consideration of an application under Order 39, Rules 1 and 2 and Section 151 and/or under Order 40, Rule I, C. P. C.

Shri Section Rule Joshi, learned counsel for the defendants non-applicant No. 1 argued in support of the impugned order. None appeared for non-applicants 2 to 5.

Having heard the learned counsel for the parties, I have come to the conclusion that this revision deserves to be allowed.

Section 32 (1) of the Act, which is relevant to the situation, reads as under:

"S. 32. Bar to hear or decide suits:-- No rait to enforce a right on behalf of a public trust which has not been registered under this Act, shall be heard and decided in any Court"

The Legislative prohibition so enacted in Section 32 (1) appears to be restricted in its operation, inasmuch as what is barred by the afore-| said provision is hearing or decision of the suit Accordingly the prohibition so enacted cannot be construed as to preclude Courts from entertaining and adjudicating upon applications for interim reliefs. In order to hold so, further restriction will have to be imported in the Section to the effect that the Courts will be precluded even from proceeding to grant interim reliefs when a stay is ordered under the Section. The provisions placed in Section 32 appear to enact with regard to stay matter a statute in pari materia with Section 10, C. P. C. Section 10 omitting its Explanation, which is not relevant for the present purposes, reads as under:

"Section 10. Stay of suit.-- No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same of any other Court (in India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of (India) established or continued by (the Central Government) and having like jurisdiction, or before the (Supreme

Court)." (Emphasis supplied)

The prohibition enacted by Section 10, C. P. C. is against proceeding with trial of the subsequent suit and does not appear to enact provision against the Court passing interlocutory orders. An order staying a suit u/s 10 does not prevent a Court from making interlocutory orders, such as orders for Receiver or an injunction or an order for attachment before judgment. (See *Senaji Kapurchand Vs. Pannaji Devichand*,). A Court, which is seized of a suit which has been stayed pursuant to the provisions of Section 10, C. P. C. had nevertheless jurisdiction to make interlocutory orders, if relief in that behalf is claimed by any of the parties. Section 10 C. P. C. also seems to refer to the stay of trial of suit and not to other proceedings of an interlocutory character. This is what has been held by Vankataswami, J. in *Baburao v. Kadarappa* (AIR 1974 Mys 63).

Having regard to the object which Section 32 of the Act seeks to achieve and the language in which it is couched, there appears to be no legal impediment for applying the aforesaid principles and holding that even after ordering stay of trial of a suit u/s 32, the Court retains jurisdiction to grant first aid by way of temporary injunction or appointment of receiver, on a case being made out for the purpose.

In this view of the matter, the learned Judge of the trial Court appears to have refused to exercise jurisdiction when he stayed his hands from taking for consideration of the applications submitted by the plaintiff under Order 39, Rules 1 and 2 and Section 151, C. P. C. and the other under Order 40, Rule 1, C. P. C. Accordingly, the impugned order manifests a clear case of refusal to exercise jurisdiction. If it is allowed to stand, it will occasion failure of justice and/or cause irreparable injury to the applicants, because no body knows when the proceedings before the Registrar of Public Trust, whose order is subject to a civil suit, will come to an end.

Accordingly, this revision succeeds and is hereby allowed. That part of impugned order, which concerns itself with stay of consideration of the applications for grant of temporary injunction and appointment of receiver is concerned, is hereby set aside and the trial Court is directed to proceed to decide the applications submitted by the plaintiff for issuance of temporary injunction and appointment of receiver, as expeditiously as possible. Parties shall appear before the trial Court on 15-3-1982. Records be sent back so as to reach there before the aforesaid date. Having regard to the nature of the controversy between the parties, I make DO order as to costs.